J.E 360 -92

G. R. S. IX-5]

Previous references.

1892-3

~~191~~.

(185)

File No. 19-1892

Serial Nos. 1-4

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-4

~~Part~~ B for ~~Apl~~ year 1893

SUBJECT.

Memorial of Samaganasidda and others to be transported for life to H.H. the Maharaja of Mysore

---

W D 88—GPB—50,000—24-7-16

Countermarked

2

Prisoners Lamna Jurusiddappah & 4 others -

(2)

1 No: of case	Chitaldroog Sessions case No: 5 of 1892 and criminal appeal No: 163 of 1892 on the file of the Chief Court.
2 Court or Courts which tried it	Sessions Court Nagar Division and the Chief Court
3 Nature of sentence originally passed and confirmed or altered in appeal	Acquitted by the Sessions Court but sentenced to transportation for life by the Chief Court on appeal by Government —
5 Date of sentence	27th February 1893

1 Sub of the Decree
2 Printed Copies of the Record of the Sessions Trial have been received - They have been called for & received with them Probably the record has not been printed

The file was not sent up for binding

27/4

(4)

Memo. Submitted for H.H.'s orders.

The Judgts of Sessions Judge & Chief Ct are printed

1. Upon appeal preferred by the Govt agt the acquittal of the Sessions Judge of Nagar in Sessions Case No 5 of 1892, the Chief Court have convicted & sentenced to Transportation for life the following 6 persons:—

1st Accused. Sanna Gurusiddappa
2d .... Basvalingappa
4th .... Balegar Irappa
5th .... Beda Ira
6th .... Nanjappa
& 7th .... Virganti Chennabba.

2. Of these 6 persons all, except the 2d accused Basvalingappa, memorialize your Highness for exercise of the prerogative of Mercy on the ground that they are innocent of the Murder of which they have been Convicted

3. Three persons travelling on the high road in a Cart to Chitteldroog were attacked & murdered most brutally on the night of the 30 March 1892, about Midnight—

it is well to remember that it is impossible to get Evidence of a previously planned murder, such as this, except it be from persons connected with the previous Conspiracy & of its actual execution. Untainted Eye witness it wd be absolutely futile to expect - What we have to see is whether the Evidence as given by accomplices & Approvers is in substantial accord with truth and is consistent with all proved facts. In my opinion the Evidence of Kalappa and Dodda from Siddappa fulfil these Conditions.

8. This Evidence and the Confessional Statements of the 6th & 7th accused before the Magr. (which latter is as to after them) Contain in my opinion ample proof of the guilt of Everyone of the Memorialists.

9. If under Such circs your Highness decides to reject the Memorial, I submit herewith a Draft order for approval or other Orders -

26 April 93

K. Sheshadri Jgr

5

(5)

Draft

In the Matter of a Memorial

addressed to His Highness the Maharaja by Lamna gurusidda=
=pah, Balegar Irappah, Bedar Ira, Hanyeppah and Hira=
=gunte Bhimappah, Prisoners in Chitaldroog Sessions case
No: 5 of 1892 and criminal appeal No: 163 of 1892 on the
file of the Chief Court.

His Highness the Maharaja

has been pleased to pass the following

Order.

After Careful Consideration, no grounds
appearing for any interference with
the Sentence of Transportation for life
which has been passed upon the
memorialists, their Memorial is hereby
rejected —

5/5/95

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(General Serial No. 29.)

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1893

Section Ct
No 19-1892
Serial No 1

From

The Chief Judge
Mysore (1)

To

The ~~Secretary to the~~ Dewan
of Mysore.

Dated 15 April 93

Despatched 18 —

Received

Enclosures No. two

General No. 1591 } 188 —8 .
No. 52

Forwards the accompanying memorial in connexion with English translation thereof addressed to His Highness the Maharaja of Mysore by Channa Basavaiddu and 4 others accused in Chitaldroog Dépôts case No. 5 of 1892 sentenced to transportation for life.

J. Moore
17/4

Put up to records.
1893 of
Rept. to the Dewan
in Official Note —
Illegible
23/4

No 1591 In two
5-2

Bangalore 15th April 1893

(1)

From

T. R. A. Thumboo Chetty Esquire
Chief Judge of Mysore

To

Sir K. Seshadri Iyer, K.C.S.I.
Dewan of Mysore

Sir,

I have the honor to forward herewith the accompanying memorial in Canarese, with English translation thereof, addressed to His Highness the Maharaja of Mysore, by Sanna Gurusidda and 4 others, accused in Chitaldroog Sessions Case No 5 of 1892, who have been sentenced to transportation for life by the Chief Court, in Criminal Appeal No 163 of 1892.

Proceedings of this Court in Appeal, together with two printed Copies of the judgments, are herewith forwarded.

The

The records of the Sessions Case were returned to the Assistant Government Advocate with this Office No 1113/655 dated 10th March 1893 for Submission to the Chief Secretary

I have the honor to be,
Sir,
Your most obedient Servant,

E. T. Macumber Shelley
Chief Judge.

SRS

4

(4)

To

His Highness the Maharaja
of Mysore

The humble memorial of (1) Sanna Gurusiddappa (2) Baligar Erappa (3) Beder Era (4) Nanjappa and (5) Neerganti Chennappa undergoing sentence of transportation for life under orders of the Chief Court in Criminal appeal no 163 of 1893 -

1st Sanna Gurusiddappa

That they have unjustly charged the memorialist with having murdered the three deceased persons viz Gurusiddappa, Gurusantappa & Bhadrappa - and inflicted punishment upon him - That the memorialist did not commit the murder That the memorialist was sic day is well -

well known to the medical officer - That the memorialist knows nothing of the case. That the Police tortured (?) much and had injustice done (to the memorialist?). That the memorialist humbly prays His Highness to be pleased to Examine the record & order his release -

— mark of Sanna
Gurusiddappa

2? Balegar Eraffpa.

That the memorialist knows nothing whatever of the case - They have unjustly sentenced him to transportation for life on the statement of the Police - The memorialist most humbly prays His Highness to be pleased to take his case into kind consideration & order his release -

/ mark Balegar
pa

3?

6

3? Beder Era.

That the enemies of the Memorialist joined together and caused him this injustice. He knows nothing, nor is he aware of the circumstances of the case. That the Memorialist prays His Highness to be pleased to order his release from the Sentence of transportation he is undergoing.

/ mark of Beder Era.

4. Nanjappa

That the enemies of the Memorialist and the Police jointly concocted the case and unjustly had him Sentenced to transportation - That the Memorialist did not commit the deed, nor does he know any thing. He therefore prays His Highness to be pleased to take his case into kind consideration & order his release this time -

/ mark of Nanjappa

5.

5th Neergunti Chennappa -

That the memorialist knows nothing of the case, nor did he commit the deed - That he has unjustly been sentenced to transportation - The memorialist most humbly prays that His Highness maybe pleased to take his case into consideration and after perusing the judgment of the Lower Court to order the release of the memorialist -

/ mark of Neergunti
chennappa -

The Chief Court have in their judgment in criminal appeal no. 163 of 1892. found the memorialists guilty of the offence of murder for reasons fully stated in the judgment of the Chief Judge - The original records of the case are in the Chief Court.

8th april 1893.

Shamrao Vithal
Sessions Judge
Nagar Division

Sd

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4. [illegible]

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5. [illegible]

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IN THE COURT OF SESSIONS NAGAR DIVISION.

Dated Chitaldroog, 8th June 1892.

Present C. Cress Esqr.

Sessions Judge.

Chitaldroog Sessions Case No. 5 of 1892.

Government. Complaint.

Vs.

1. Sanna Gurusiddappa.
2. Basalingappa.
3. Chennappa.
4. Balegar Irappa.
5. Bedar Ira.
6. Nanjappa.
7. Nirgunte Chennappa.

} Accused.

Offence :—

1*st* Against the 2nd, 4th, 5th, 6th & 7th accused. murder under Section 302 of the Indian Penal Code.

2*nd* Against Do Culpable homicide not amounting to murder under Section 304 of the Indian Penal Code.

3*rd* Against the 1st and 2nd accused. Abetment of murder under Sections 109 & 302 of the Indian Penal Code.

4*th* Against the 1st & 3rd accused. Abetment of culpable homicide not amounting to murder under Sections 109 & 304 of the Indian Penal Code.

Opinion of the Assessors :—

Guilty.

Finding of the Judge :—

Not guilty.

Order :—

Acquitted & released.

One Gurusiddappa the Patel of Nibgoor had filed a suit on a bond executed by the 1st accused in the Munsiff's Court at Chitaldroog and as the adjourned hearing was fixed for the 31st march 1892, he started from his village on

the preceeding night in company with Gurusanta Badrappa and Kalappa in a cart which was borrowed from the Patel of Bidrahalli.

2. After they had passed the village of Mudapur, and had proceeded a mile or so beyond this place they were suddenly attacked about midnight by a gang of men who were armed with clubs, kodlis, and other weapons, and three of the travellers *viz:* Patel Guru Sidda, Guru Santa, and Badrappa were most barbarously and brutally beaten to death as they lay in the cart only Kallappa being suffered to escape scot free.

3. This latter individual remained near the ghastly scene of the tragedy until dawn, when he started off to Mudapur where he reported the matter to the Patel, who at once sent off reports of the dreadful occurrence to the Police and to the Amildar who speedily repaired to the spot where they found that the heads and bodies of the deceased had been terribly bruised and battered, skulls and ribs being broken, their cloths, the cart, and the mat therein stained with blood, and the Patail's ears torn with the violence with which his earrings ("*athoontees*") had been snatched away. Plunder was, however, not the object of the attack, for Budrappa had one earring intact, and Rs. 14 and odd were found on the mat on which the bodieslay turbans and other clothes also lay scattered around the cart which had been capsized into a ditch by the roadside. The usual Mahazirs were prepared, and after some enquiries were made the accused were arrested and put up for trial.

4. The accused pleaded not guilty to the charges framed against them.

5. The following witnesses were examined for the prosecution.

1. Kalliah.
2. Dodda Guru Siddappa. (approver).
3. Santavva.
4. Chennappa.
5. Adivappa.
6. Basappa.
7. Sanna Thammia.
8. Parasarama.
9. Karibasia.
10. Pala.
11. Guru Siddappa.
12. Bhyrappa.
13. Chennaga.
14. Siddavva.
15. Kallappa.
16. Kallappa.
17. Basappa.
18. Mahomed Hyder.
19. Sivia.
20. Linga.
21. Gulyappa.
22. Jadar Hanumantha.
23. Shamanna.
24. Lingappa.
25. Gundappa. and
26. Venkat Rao.

6. The following Exhibits were filed for the prosecution :—

A. Stamp paper bond, dated 12th November 1889 purporting to have been executed by Sanna Gurusiddappa (1st accused) for 100 Rs.

B. Muddapur Patail's (6th witness for prosecution) report dated 31st March 1892, to the Amildar of Chitaldroog regarding the murder of the 3 deceased persons.

C. Mahazir of the Panchayet held on the 1st April 1892, regarding the condition of the corpse of the 3 deceased persons, of the cart they were lying in, of the things found there, and the surroundings of the scene.

D. A chintz packet of Kalliah's (1st witness for prosecution) with blood stains.

E. A Panche found in Muddapur well, belonging to the above Kalliah.

F. A white turband found in do belonging to do

G. Petition dated 1st July 1889 by Agsar Linga of Nibgoor some of the accused and others to the address of Jagalur Taluk Cutcherry complaining of the deceased Patail Gurusiddappa having prohibited the washing of clothes by the said Linga.

H. A black broken latti, and two lattis (clubs).

I. An Axe (kodli).

J. Iron spear head with a bamboo stick fitting it.

K. A broken club 2nd witnesses's.

L. A latti of black wood.

M. A latti 7th accused's

N. A white turband found on the body of the deceaseb Gurusiddappa.

O. A Panche found on the body of the deceased Gurusiddappa.

P. A Dhotra do do

Q. A silk Lingam cloth do do

R. A small cotton carpet do do

S. A black kumbli found in the cart.

T. A Dhotra found on the body of the deceased Bhadrappa.

U. A black Jacket torn and blood stained.

V. A white turband found in Muddapur well.

W. A black tweed coat found on the body of the deceased Gurusantappa.

X. A Panche found on the body of the deceased Bhadrappa.

Y. A handkerchief with Lingani belonging to the deceased Gurusantappa.

Z. A Nare or grey cumbly.

A! A hachada or white covering cloth of Gurusantappa.

B! Written statement of Gurusiddappa (1st accused) dated 22nd February 1892 in O. S. No. 588 of 1891 on the file of Chitaldroog Munsiff's Court.

C! Deposition of—do—dated 14th Marh 1892 in Do—Do.

D! Statement on oath given before the Chennayendra Mutt dated 22nd July 1891 by the 3 deceased persons, and another, against D. Gurusiddappa (2nd witness for prosecution) in connection with the marriage of the latter's daughter.

E! Plaint dated 2nd December 1891, instituted by the deceased Patail Gurusiddappa against the 1st accused in O. S. No. 588 of 1891.

F! Mahazir of Panchayetdars dated 6th April 1892 regarding the search made and cloths and clubs found in the Muddapur well and around it.

G! A white turband found in Muddapur well.

H! Mahazir of the Panchayetdars dated 6th April 1892 regarding the finding of a club of black wood near a bridge on the road to Jagalur from Muddapur.

I! Mahazir of the Panchayetdars dated 11th April 1892 regarbing D. Gurusiddappa (2nd witness for prosecution) having pointed out 3 clubs buried in the mire close by the bridge near Muddapur.

J! Criminal petition dated 23rd March 1892 presented by Sivia (19th witness for prosecution) to the Munsiff Magistrate of Chitaldroog complaining of Patail Gurusiddappa (deceased) having taken a bribe of 5 Rs.

K! A Panchay.

L! An Axe found in the house of 6th accused.

M! Deposition of Mr. Raja Rama Rao, Assisstant Surgeon, before the Committing Magistrate as 25th witness for prosecution.

N! *Post-Mortem* report dated 2nd April 1892, of the examination held on the body of the deceased Gurusiddappa.

O! Do do Gurusantappa.

P! Do do Bhadrappa.

Q! Statement of the 1st accused made before the Committing Magistrate.

R! Do 2nd do do.

S! Do 3rd do do.

T! Do 4th do do.

U! Do 5th do do.

V! Do 6th do do.

W! Do 7th do do.

X! Plan of the scene of murder the road, villages and surroundings prepared by the Amildar (25th witness for prosecution.)

7. The 6th accused stated as follows :—

"I hear my statement Exhibit V read. I confessed before the Committing Magistrate because the Police tortured and forced me to do so. I know nothing about the murders with which I am charged. Kallia and Dodgurusidda were incited by the Inspector to speak against me."

8. The 7th accused stated as follows :—

"I hear my statement Exhibit W read. I made it because the Inspector beat and ill-used me. I did not join in committing the murders charged. I know nothing about them.

9. The following Exhibits were filed for the defence :—

No. 1 Petition dated 30th March 1892 addressed to the Munsiff of Chitaldrug by Gurusiddappa 1st accused forwarding Medical Certificate of his illness (Exhibit No. 2.)

No. 2 Sick certificate dated 30th March 1892 granted by the Jagalur Hospital Assisstant to the 1st accused.

10. The following witnesses were examined for the defence :—

1. Gurusiddappa 2. Erabasava.
3. Thimmiah and 4. Samabhadriah.

11. I have not considered it necessary to record the statements of the accuseds 1 to 5 in this Court, as they have been very fully examined by the Committing Magistrate, and generally rely on the admitted ill-feeling between them and the deceased's party as the cause of their being falsely charged with the murder, of which they deny all knowledge, and they plead alibis which each of the 2nd, 4th and 5th accuseds have examined witnesses to establish.

12. The 1st and 3rd accuseds are not charged with having taken any active part in the commission of the murders; they are said to have abetted the offence committed by the others by having conspired with them to kill the Potail and those who aided him in harassing and ruining the accused and their party with whom they were on terms of enemity and ill-will.

13. The principal, and only eye, witnesses for prosecution are Kallappa and Dod Gurusiddappa (1st and 2nd); the former was travelling in the cart with the deceased when they met with their fearful death, and the latter was really the ring-leader in the bloody tragedy enacted by the accused, but has been made an approver in the case I regret to say, for it would have been better had one of the minor actors been allowed to denounce his fellows, rather than that the principal offender should escape just retribution.

14. However, I must proceed with the case as it lies before me, and I feel bound to hold that even if the evidence for the prosecution be believed in its entirety, the 1st and 3rd accused cannot legally be held to be abettors of the murders committed by the others; the evidence of Kallappa and Gurusiddappa

is to the effect that on one occasion when the 3rd accused was present, Dod Gurusiddah said he would murder all who got up or helped in suing upon forged bonds, and again that on the evening of the "Oogadee" just before the Potail started for Chitaldrug the whole of the accused's with Goolapah and Hanumantappa met at the 1st accused's house where Dod Gurusidda stated that he would surely kill the Potail, but beyond the vaguest threats (which the Ex-Shanbogh son Thamanna (7th witness for prosecution) alleges that the accused's were always uttering, there is no evidence to shew that the 1st and 3rd accused knew of, or joined in, any conspiracy to actually murder the Potail or his associates at any particular time, or in any specific manner, and I fail to see how these two accused are guilty of aiding and abetting in any greater degree than Goolappa and Hanumantha, who were as cognizant of the threats uttered by the others as the 1st and 3rd accuseds were, and yet they have been discharged by the Committing Magistrate. As there is no proof of any direct act omission or instigation on the part of the 1st and 3rd accuseds in furtherance of the murders, I acquit and release them.

15. As I have said before, plunder or robbery was not the object of the men who committed the dastardly triple murder, otherwise they would have killed and rifled Kallappa as well as the rest of the party who were travelling in the cart. The fact that this man was spared, and that he had not met with the slightest injury, attracted the notice of the Amildar and the Panchayetdars who assembled on the scene on the morning of the 1st April, and when he was questioned he appears to have lost his courage and presence of mind and denounced twelve of the accused's party as the perpetrators of the diabolical deed. His story is to the effect that as he was one of the attesting witnesses to the bond upon which the Potail had sued the 1st accused, Dod Gurusidda bribed him with 100 Rupees not to speak to the execution of the bond, and told him they would kill the Potail on his way to the Munsiff's Court. If this man really received 100 Rupees, the evidence regarding which is however extremely discrepant, such a comparitively large sum must have been paid to him in order to induce him to join the perpetrators of the murder as an accomplice, for he evidently gave Dod Gurusiddappa intimation of the time of the Potails' departure from the village, and aided and abetted in the murder of the unfortunate men; his statements therefore are not worthy of any more credit than are legally attachable to those of an accomplice, and they are further intrinsically untrustworthy as I will presently shew.

16. He mentioned Goolappa as one of the assailants, at the time when the Mahazir was drawn up, and when his recollection should have been fresh and vivid; but this Goolappa has been proved to have then been on his way to, or at Chitaldrug, whether he had been sent with a petition and Medical Certificate by Dod Gurusiddappa, on behalf of the 1st accused.

17. Further, that was the night of the new moon, when darkness would prevail after 7 P. M., and how could Kallappa possibly have seen and recognized twelve persons at the darkest hour of the night, viz., about 12 or 1 A. M.? Moreover no attempt is made to explain how or why this witness came to charge twelve persons with the murder soon after it occurred, and yet now deposes that only six were concerned in it; why should he be credited with regard to his identification of one or more persons, if not regarding others whom he also professed to have seen and recognized on the night in question.

18. His statements and those of the approver Dod Gurusidda also disagree on two very important particulars. For while Kallappa asserts that Dod Gurusidda pulled him off the cart, and took his jewels from him, the approver absolutely denies these facts, which should have been peculiarly within the knowledge of both of them, and regarding which there should have been no doubt or difference.

19. There with regard to the alleged motive for the crime, it is said that each and all of the accused bore the Potail and his party a grudge owing to various land and other disputes, but the evidence regarding these is for the most part vague and unsatisfactory, and refers to stale quarrels which could scarcely have been the cause of or motive for the commission of the murder. Indeed the 2nd, 4th, 5th, 6th and 7th accused are not shown to have had any, or scarcely any reason whatever for hating or hurting the Potail and his party, while the unpleasantness which is said to have arisen in connection with the 3rd accused's wife, occurred three years ago, and could not in any case have influenced the other accused in any way since they had no connection with the matter. Dod Gurusiddappa certainly had good reason for bearing the Potail a grudge, since the latter had recently slippered him in connection with his improper intimacy with one of the Potail relatives; Dhobby Linga and Siviah (19th and 20th witness for prosecution) also had some cause for ill-will since the Potail deprived both of them of their livelihood, but these are not charged with the murder, and the alleged motives against the present accused are extremely farfetched and improbable. The 6th and 7th accused confessed before the Committing Magistrate probably with the hope of getting off like the approver, but they have now withdrawn their confessions.

20. From the whole of the evidence I am quite convinced that Dod Gurusiddappa and Kalappa took an active part in the diabolical murder of the three men, the one from motives of revenge, and the other because he was bribed to do so, and when the latter was hard pressed by the Police and the Amildar to disclose the truth, he recklessly mentioned the names of every one who was supposed to be inimical to the Potail; but I am not prepared to convict the accused of the grave crime of murder on the tainted, interested, and contradictory evidence of the two men who undoubtedly took the most active part in the commission of the terrible deed. The curious way in which the cloths are said to have been discovered in a well through the information given by Siviah, and the finding of only two clubs at first, the other three having been most suspiciously pointed out by the approver one week later, lead me to view the statements of this man, and of most of the other witnesses, with much suspicion.

21. There is therefore room for grave doubt in this case with regard to the participation of the accused in the commission of the murders, and I feel bound to acquit them thereof.

22. Finding.

The Court, differing from the assessors, finds the accused 2. Borlingaya 4. Balgar Erappa 5. Beder Ira 6. Nangappa 7. Neergantee Chenna not guilty of having committed murder, under Section 302 of the Indian Penal Code; or of having committed Culpable Homicide not amounting to murder under Section 304 of the Indian Penal Code, and the Court directs that they be acquitted and released.

The Court differing from the assessors, finds the first accused Sonna Gurusidda, and the 3rd accused Chennappa not guilty of having abetted the commission of murder under Sections $\frac{302}{109}$ Indian Penal Code, or of Culpable Homicide not amounting to murder under Sections $\frac{304}{109}$ Indian Penal Code, and the Court acquits and discharges them from custody.

(Signed) C. CRESS.

8th June 1892. *Sessions Judge.*

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday the 27th day of February 1893.

Present.

T. R. A. Thumboo Chetty Esqr., Chief Judge

and

P. N. Krishna Murti Esqr., Judge.

Criminal Appeal No. 163 *of* 1892.

Government — Appellant,

(by Mr Ramaswamier Assistant Government Advocate).

Vs.

1. Sonna Guru Siddappa.
2. Basalingappah.
3. Chennappah.
4. Balegar Irappah.
5. Bedar Ira.
6. Nanjappah.
7. Nirganti Channappa.

} Respondents.

(By Mr. L. Srinivassiengar).

Appeal against the order of acquittal passed by the Sessions Judge of Nagar in Chittaldroog Sessions Case No. 5 of 1892.

This appeal coming on for hearing on Monday the 6th day of February, 1893, the Court delivered the following :—

JUDGMENT.

The Chief Judge. This is an appeal by Government against the order passed by the Sessions Judge of Nagar Division, in Sessions Case No. 5 of 1892, acquitting the Respondents of the charge of murder and abetment of murder.

The Assistant Government Advocate was heard in support of the appeal and Mr. Advocate L. Srinivassiengar for all the Respondents.

The principal evidence against the Respondents is that of Kalappah 1st witness for prosecution, which is corroborated in the main by that of the approver (2nd witness for prosecution) Dodda Guru Siddappah.

The Sessions Judge refused to accept as credible the evidence of these two witnesses and differing from the Assessors, who found the Respondents guilty, acquitted them. On a careful perusal of the proceedings and after giving this

case my best consideration, I am constrained to remark that there has been a gross miscarriage of justice in the acquittal of all the Respondents and that the perpetratars of a foul murder have been let off with impunity.

The reasons given by the Sessions Judge for the acquittal of Respondents do not commend themselves to me, and I regret to observe that the Sessions Judge has disposed of this very serious case of murder in a very summary and off-handed manner.

The murder of Potail Guru Siddappah, Guru Shantappa and Bhadrappa was committed on the night of 30th March 1892, at about midnight, at a short distance from the village of Muddapur on the high road to Chittaldroog. The said three persons and Kalappa were all travelling in one cart that night. It was Kalappah that first gave intimation of the murder to the Potail of Muddapur early on the morning of 31st March, within a few hours after the commission of the offence. It is true that he did not then and there give the names of the murderers; but he was bribed by the murderers to keep the matter a secret. He, therefore, abstained from revealing their names at once. In the Potail's report, the number of persons that stopped the cart and made the attack is not given. It is in the Mahazar that Kalappah said there were 10 ot 12 persons who made the attack but he was perhaps able to recognize only the Respondents and approver, but not the others. Kalappah's evidence, however, shows that there was a previous concert and combination on the part of Respondents and approver to murder the Potail Guru Siddiah. There is some corroboration of this in the evidence of Prosecution 7th witness Sanna Tamma and 19th witness Sivia. The deceased Potail filed a civil suit against the 1st Respondent Sanna Guru Siddappah, in the Chittaldroog Munsiff's Court on a bond the genuineness of which was disputed. Kalappah was an attesting witness and Guru Shantappah (one of the three persons murdered) was the writer. The case was partly heard and adjourned to the 31st March 1892. Kalappah received summons to attend the Munsiff's Court only a few days before the 31st of March. He was dissuaded from going to Court and giving evidence as to the bond, but he said that, having been summoned, he was bound to attend. A bribe of Rs. 100 was offered to and accepted by him, on condition of his giving evidence unfavorable to the Potail and favorable to 1st Respondent and keeping the design to murder the Patail a perfect secret. Attempts were also made to effect a compromise with the Potail through Kalappah which failed, and it was afterwards arranged that he should go to Chittaldroog with the Potail driving his cart. That Kalappah was tampered with to give evidence favorable to 1st Respondent, is spoken to by Prosecution 7th witness Sanna Tamma. It was this witness that was employed by the 1st and 3rd Respondents and the approver to speak to Kalappah and to persuade him to give evidence for 1st Respondent. The witness also deposes to a consultation held on the day previous to the commission of the murder, and to the said Respondents having openly avowed they would kill the Potail as he had forged bonds to ruin others. The 1st Respondent is a cousin of the approver. According to Kalappah, the bribe of 100 Rs. was paid by the approver. The latter admits having made the payment and says that he got the money from 1st Respondent himself. The approver and 1st Respondent were closely related to each other; they headed or belonged to the faction which was opposed to that of the deceased Potail. Both were acting in concert in tampering with Kalappah and gaining him over to their side, and this they succeeded in doing by payment of the bribe of 100 Rs. The evidence of the Prosecution 14th, 15th, 16th and 17th witnesses shows that, about the

time the bribe is alleged to have been paid, Kalappah settled some of his debts and left some money with his own wife. Kalappah, though bribed, was unwilling to join the Respondents and to take an active part in the murder of the Potail. He was assured that, if he drove the Potail's cart, he would be spared. It was probably on this assurance that he went with the Potel. He also, perhaps, did not anticipate that any other than the Potail would be assailed. This accounts for his having taken his relation Badrappah with him. Kalappah says that he asked Badrappah to stay away, but that he did not mind the hint, probably apprehending no danger to himself. At the time of attack, the murderers spared Kalappah as they had promised to do, as he accepted the bribe and was apparently in their confidence, but, in killing the Potail, they must have met with some resistance from Guru Shantappah and Bhadriah and murdered the two latter also, to avoid their identifying the murderers and giving evidence against them. Kalappah had not the slightest motive to murder Guru Shantappah or Bhadriah, but he lent himself to a base conspiracy, little expecting that the conspirators would carry their vile design into execution and go to the extent of murdering two other persons along with the Potail. As the only survivor of the four persons who travelled in one and the same cart and fearing that he would be suspected, he, while informing the Potail of the murder, tried to conceal the names of the culprits and made it appear as if the murder was committed by some unknown robbers. But, after the Police took up the case, the secret was out. There is no doubt a discrepancy as to the number of persons who were present when the cart was upest and the attack made, but both Kalappah and the approver clearly identify the Respondents 2, 4, 5, 6 and 7 as having been present and taken an active part in the murder. All these met together with Goollappah and Hanumappah (discharged by the Magistrate) in 1st Respondent's house on the evening previous to the commission of the offence, and I am, therefore, disposed to believe that they were all present at the scene of murder. It is said that Goollappah was sent in advance to Chittaldroog on the evening previous to the murder, with a Medical certificate to be produced in the Munsiff's Court, to show that 1st Respondent was prevented by illness from going to Chittaldroog. It seems to me that procuring the medical certificate was also a precaution intended to avert suspicion against 1st Respondent. If Goollapdah was asked to take the certificate and to go to Chittaldroog on the evening of 30th March 1892, he may have left the village with the Respondents or waited for them on the road and joined them when the attack was made. Be this as it may, both the approver and Kalappah are positive as to Respondents 2, 4, 5, 6 and 7 having been actually present when the murder was committed. Kalappah says that he recognized the assailants as they spoke and he knew their voices. Even though Kalappah may have been mistaken as to who all were actually present, the aprover, who was the prime mover in the whole affair, could not have made a mistake as to who all accompained him and assisted him in committing the murder. I entertain no doubt whatever, upon the evidence of the approver and Kalappah, that the said 5 Respondents, together with the approver, took an active part in the murder. The discrepancy in the statement of Kalappah, said to have been recorded in the Mahazar, as to 11 persons having been concerned in the murder, is probably attributable to the fact that the murder included those who actually committed the murder as well as those at whose instigation it took place and who were present at the consultation in 1st accused's house. I am, therefore, not disposed to attach much importance to the alleged discrepancy.

The Sessions Judge, in para 18 of his judgment, refers to two discrepancies in the statements of Kalappah and approver as to who pulled Kalappah off the cart and who took the jewels (ear-rings) from him. Kalappah, in his examination in chief, deposed that the assailants upset the cart, pulled off the top mats and began poking with spears. He added "Belgar Irappa (4th accused) struck me with a club I cried out and Dodda Guru Sidda (approver) said "Dont beat him and took me under his protection" when, in cross examination, Kalappah stated that the approver Dod Guru Sidda dragged him from the cart, he evidently referred to his having been dragged to prevent 4th accused beating him. The statement made by the 7th Respondent Nirganti Chennappa before the Committing Magistrate explains why Kalappa was beaten. Chennappa did not know that he was in the cart. It was Guru Siddappa, the approver, that knew that Kalappah was in the cart and he, therefore, interfered to save him, when the others were beating the Potail and his two companions. The Prosecution 2nd witness, the approver, deposed as follows. "Four of us *viz.*, 2nd, 4th, 5th and 6th accused turned the cart sideways. I slipped and fell down and the others commenced beating the inmates of the cart. Badrappa cried out and awoke Guru Santa, I ran up and upset the cart. Kalappa fell off and cried out. We said, 'spare him,' and the whole six of us began to belabor the three others." It will thus be seen that Kalappah fell from the cart and, while being beaten, approver interfered and probably dragged him aside to prevent the others beating him. It is this that Kalappah probably referred to in his Cross Examination. I see no such great discrepancy as to throw discredit on his statement. Then, as to the removal of the jewels worn by Kalappah, it will be seen, on a perusal of the evidence of the approver, that it was he that instructed the others, who took part in the murder, to remove the jewels and cloths from the Patel and others who were attacked. When the 1st witness Kalappah says that Dod Guru Siddappa removed his mooras and cloths he apparently referred to what was done by the other assailants under his orders. This is further confirmed by the statement of Chennappa (7th Respondent) that he removed the jewels from Kalappah as directed by the approver. From what I have stated above, it is clear that the alleged disagreement between the statements of Kalappah and approver, about which so much stress was laid by the Sessions Judge, disappears when we carefully analyse and consider the whole evidence along with the statements made by 7th Respondent Chennappa. It is true that to some extent Kalappah may also be regarded as an accomplice with the approver and that the evidence of both these persons must be received with caution as there are no other witnesses to corroborate their evidence as to the commission of the murder. From the circumstances of the case and the manner in which the murder was committed, it is impossible to expect any positive or direct evidence of the murder, except from Kalappah or any of the murderers and the law (Section 133 Evidence Act), therefore, wisely provides that "an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

That Kalappah went with the three deceased persons, *viz.*, Potail Guru Siddappa, Shantappah and Badrappah in a cart is corroborated by the evidence of Prosecution 3rd 4th and 5th witnesses. The bodies were found near the scene of murder by the 6th witness and identified clearly by the 3rd, 4th, and 5th witnesses. The Medical evidence and the *post-mortem* Examination showed that the deceased were cruelly beaten and wounded and death was produced

almost instantaneously by the wounds. That the three persons named above were brutally murdered on the date and at the place mentioned in the charge there is no doubt whatever. That the Respondents 2, 4, 5, 6 and 7 were actually present at the scene of murder and assisted the approver in the commission of murder is, to my mind conclusively established by the evidence of Kalappah and approver, which I see no sufficient reason to disbelieve. The 6th and 7th Respondents admitted the crime before the Committing Magistrate, but before the Sessions Judge, they said they were tortured and forced to do so by the Police. They failed to prove their allegation and as, what they narrated before the Magistrate is substantially corroborated by the evidence of the Prosecution 1st and 2nd witnesses. I am inclined to believe that their confessions are true and were made voluntarily. The 2nd Respondent called one witness to prove alibi. The witness is accused's own brother and his evidence shows that the accused was in Knibgur up to 9 P. M., on a Sunday preceding the Oogadi, *i. e.*, on 27th March 1892, but the murder was committed on 30th March 1892 about midnight.

The 5th accused called his own Brother-in-law, Eerabasiva, to prove that he stayed in his own house all night on the Oogadi day. But this witness is a resident of a different Village. He says he came to Knibgur from a jathra and slept with 5th accused only one night and left next morning. I do not believe his uncorroborated and interested evidence. The son of the 5th accused and the other witness Sun Rudriah say that they slept in the angala or yard of the house of 5th accused on the night of Oogadi, and that the 5th accused also slept there that night. These two witnesses do not at all refer to Eerabasiva having slept with them.

The other Respondents did not cite any witnesses in their defence.

There was enough of motive for the murder. The approver and 1st Respondent are cousins. They headed the faction to which all the other Respondents belonged. The deceased Patail was the head of the other faction. The Civil suit that was pending in the Munsiff's Court was against the 1st Respondent. The bond sued upon was alleged to have been forged. The deceased Patail was suspected of having forged some other bonds also. The Patail and his two companions were way laid and murdered on their way to Chittaldroog, where they had to appear on 31st March in connection with the hearing of the pending Civil Suit. All the circumstances of the case, proved by the evidence of Prosecution witnesses and by the admissions made by 6th and 7th accused, establish beyond doubt, that it was in connection with the Civil Suit instituted by the deceased Patail against 1st Respondent the murder was committed. I have no hesitation in convicting the Respondents

2. Basalingappa,
4. Balegar Irappa,
5. Bedar Ira,
6. Nanjappah,
7. Nirgante Channappah,

of having murdered Patail Guru Siddappa, Guru Shantappah and Bhadrappah an offence punishable under Section 302 Indian Penal Code.

With regard to the remaining two Respondents

1. Sanna Guru Siddappah and,

3. Channappah,

I am of opinion that the 1st Respondent Sanna Guru Siddappah did actually instigate the approver to plan for the murder of the Potail, that as deposed to by Kallappah and approver and by the Prosecution 21st and 22nd witness, there was a previous concert and design for killing the deceased Potail. I also believe the evidence of Kallappah and approver, that the bribe was given at the instance of 1st Respondent and that, on the evening of the 30 March 1892, a few hours before the commission of the murder, there was a consultation in the house of 1st Respondent and that it was in pursuance of that consultation and on account of 1st Respondent and at his instigation, the approver took with him Respondents 2, 4, 5, 6, and 7 and committed the murder. The 1st Respondent Guru Siddiah is, in myopinion, guilty of abetment of murder, an offence punisnable under Sections 109 and 302 Indian Penal Code.

With regard to the 3rd Respondent Chennappah, there is enough of evidence to prove that he was also present at the consultation referred to in the preceding para and that he also spoke to Kallappa about the civil suit, but as both the approver and Kallappa say he was not present at the scene of murder, I am disposed to give him the benfit of the doubt and to hold that there is not sufficent evidence to make him responsible as an abettor of the murder.

Having convicted all but the 3rd Respondent, I have now to consider the punishment that must be awarded. It is no doubt a matter for regret that the principal culprit, who planned the whole thing and who instigated all the Respondents in joning him to commit a most atrocious murder, by which three lives were lost, should have been made an approver and it is also to be regretted that the 1st Respondent, who instigated the approver to do every thing for him, was not proved, to have been actually present at the scene of murder. In a case of brutal murder like this, a sentence to undergo the extreme penalty of the law would have been the most appropriate, well-deserved and exemplary punishment, but, as the principal culprits, for reasons stated, cannot be sentenced to death, I think the next severe sentence should be passed. I would accordingly direct that the Respondents, namely.

1. Sanna Guru Siddappa.

convicted of abetment of murder, Sections 109 and 302 Indian Penal Code.

and

2. Basalingappah
4. Balegar Irappah
5. Bedar Ira
6. Nunjappah
7. Nirganti Channappah

convicted of murder under Sentence 302, Indian Penal Code.

be sentenced each to be transported for life.

The 3rd Respondent Channappah will be acquitted and set at liberty.

I do not approve of the order passed by the Sessions Judge on 8th June 1892, directing the trial of the approver Guru Siddappah and Kalappah, for such offences as may be proved against them in connection with the murder of Potail Guru Siddappah, Guru Santappah and Bhadrappa. As an approver, Guru Siddapah has been granted pardon. In my opinion he has disclosed truly all the circumstances connected with the murder of the three persons aforementioned. The order for his trial cannot, therefore, be upheld.

With regard to Kalappah, I have already shown, that he had not the slightest motive for murdering Guru Santhappah and Bhadrappah and that he is in no way responsible for their murder. He no doubt received a bribe from 1st Respondent through the approver and concealed from the deceased Potail the design and intention to kill him. He took no active part in the murder and, but for the prompt information given by him and his evidence for the prosecution, the active perpetators of the murder would have escaped punishment. Under these circumstances, I deem it inadvisable to order his prosecution.

P. N. Krishna Murti Esquire.—I agree to the finding and sentence proposed by the Chief Judge. Also to the order dismissing the appeal as against the 3rd accused Chenappah. I concur in the opinon that Kalappah and approver Guru Siddappah need not be tried again for any offence.

Central Jail Press, Bangalore.—11-3-93.—52.

No

17580 10

J. 986-

Section Ct
19-1892
Serial No 2

(3)

To the Registrar & the Chief Justice of Mysore

Sir,

Gov Circulars 5779 dated 23 Oct 92 JF 141-92

Govt Letter No 12528 J611-92 dated 20 Jan 93

Attached to the warrants issued by me ordering the trials of persons in murder & other important criminal cases and the hair mustaches & beards worn by persons in such cases in which applications are made for the removal of the said appendages I have the honour to enclose herewith the record in C.C. case No 163 of 1892 on the file of the Chief Court which has been disposed of; & to request that the prisoners may be furnished with copies of the same. The sentences passed in that case have formed the subject of petitions received with the Chief Judge's No 1591/52 dated 15/4/92 & the record has

* Prisoners Sanna Veerabadra & others -

It's been printed, perhaps you will be interested to see the result

Yours

Thank you

Peter

23/12/53

12 No 18482 dy 8/3/93
To J 1030
Ex I and Records & files

(6)

Section CS
File No 19-1892
Serial No 3

The Registrar of the
Chief Court of Mysore

Sir

I am directed to for-
ward herewith for the
information of the
Judges of the Chief Court
and for communica-
tion to Sannaguresid-
dapa and 4 others, ~~five~~
prisoners in Chitaldroog
Sessions case No: 5 of
1892 and criminal
appeal No: 163 of 1892
on the file of the Chief
Court, copy of order passed
by H. H. the Maharajah
in

in the matter of the 13
Prisoners' Memorial
praying for their release

2 The records of the
Chief Court in appeal
received with the Chief
Judges letter No: 1591 of
52
15th April 92 as well
as the records of the
Sessions case ~~received~~ sent with Assist Govt. Advr. letter No: 48 of 20th March 93
are herewith returned

I have &c

for
Chief Secretary

8/5/93

Retd
8/5

14

Station Ch (General Serial No. 29.)

No 19-1892 1893

Serial No 4

13057
F.1158.

From The Registrar of the Chief Court of Mysore.

To The Secretary to the Dewan of Mysore.

Dated 9

Despatched 10 May 93.

Received

Encl 8 (Jud Cl) murder - The court may be asked. These papers may now be vetted

Attd 13/5

Enclosures None

General No. 2037 / No. 67 1893-8.

Ref. Attd 14/5

In reply states that the record in Chitaldrog Sessions Case No 5/92 was printed after the appeal was disposed of and that in future entire record will be printed in such cases.

Ref. J. Mysore 10/5

The Chief Court in their last para say that the entire record will be printed in 'murder' cases. Govt requested that the record should be printed in 'murder and important Criminal cases'. In recording the Chief Court's letter this may be pointed out & the question of what are 'important Criminal Cases' left to the discretion of the Chief Court

Subd. 12/5.

15

7

No 2037
167

Bangalore 9th May 1893

From

The Registrar of the
Chief Court of Mysore

To

The Chief Secretary to the
Dewan of Mysore

Sir,

In reply to your No 17580 J. 986 dated 25th ult.
Ultimo, I am directed to state that the
record in the Case under reference was
not printed before hearing and that after
the appeal was disposed of the Judgment
of this Court and that of the Sessions Judge
of Nagar was printed.

In future the entire record will be
printed in cases in which memorials are
submitted to Government in murder Cases.

I have the honor to be
Sir
Your most Obedient servant

Accompanies

Acting Registrar

× Chitaldroog Sessions Case No 5 of 1892 Crim: Appeal No 5 of 1892 Govt: vs Sanna Gurusidappa and 6 others on the file of this Court

MG